

CUSTOMER NO. 24498
Serial No.: 10/530,899

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AUG 14 2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

Applicant: Eric Diehl
Ser. No.: 10/530,899
Filed: October 26, 2005
For: DEVICE FOR STORING A LIST OF ELEMENTS AND METHOD OF
STORING AN ELEMENT IN ONE SUCH DEVICE
Examiner: VERDERAMO III, RALPH
Art Unit: 2186

APPEAL BRIEF

May It Please The Honorable Board:

This is Appellant's Brief on Appeal from the final rejection of Claims 1-8.
Please charge the fee for filing this Brief to Deposit Account No. 07-0832. The
Appellant waives an oral hearing for this appeal.

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CERTIFICATE OF TRANSMISSION

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number (571) 273-8300.

Date

Aug 14, 2008

Joan Sanders
Joan Sanders

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I. REAL PARTY IN INTEREST

The real party in interest of Application Serial No. 10/530,899 is the assignee of record:

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France

II. RELATED APPEALS AND INTERFERENCES

There are currently, and have been, no related Appeals or Interferences regarding Application Serial No. 10/530,899 known to the undersigned attorney.

III. STATUS OF THE CLAIMS

Claims 1 to 8 are rejected. The rejection of Claims 1 to 8 is appealed.

IV. STATUS OF AMENDMENTS

All amendments have been entered and are reflected in the Claims included in Appendix I.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 1 claims a device for memorizing a list of items, said device being adapted to memorize an item presented thereto (page 2 lines 10 and 11), said device being capable of memorizing N items, N being a natural integer (page 2, lines 16 and 17, page 3, line 32), comprising:

a first memory (A) adapted to memorize a maximum of M items that were last presented to said device, M being a natural integer less than N (page 4, lines 3 to 6);

a second memory (B) adapted to memorize N-M second items (page 4, lines 3-5), each of said N-M items being different from each of said M items (Claim 4 as originally filed), an oldest of said M items in said first memory being moved to

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said second memory if said first memory already contains M items when a first item is presented for memorization in said device (page 4, lines 21 to 23);

means for randomly selecting one of said second items memorized in the second memory (B) and for removing the selected item if said second memory already contains N-M items when said first item is presented for memorization in said device (page 4, lines 24 to 26); and

means to memorize said first item in said device, wherein said first item becomes a newest of said M items in said first memory (A), (page 4, lines 26 to 28).

Claim 2 is dependent from Claim 1 and adds a further feature that said device being adapted to supply information indicating whether said first item is already present in said device (page 4, lines 10 to 14).

Claim 3 is dependent from Claim 1 and adds a further feature that said device being adapted to contain only one copy of each item memorized (original Claim 4).

Claim 4 is dependent from Claim 1 and adds a further feature that said device being adapted to memorize the number of times that said first item has been presented to said device (page 7, lines 28 to 30).

Claim 5 is dependent from Claim 4 and adds a further feature that said device being adapted to supply information indicating whether said first item has already been presented to said device for a number of times that exceeds a predetermined number (page 7, lines 26 to 33).

Independent Claim 6 claims a method of memorizing an item in a device adapted to memorize an item presented thereto, said device being capable of memorizing N items, N being a natural integer (page 2, lines 16 and 17), said device comprising a first memory (A) adapted to memorize a maximum of M items that were last presented to said device, M being a natural integer less than N (page 2, lines 16 to 19), a second memory adapted to memorize N-M second items (page 4, lines 3 to 6), each of said N-M items being different from each of said M items (original Claim 4), an oldest of said M items in said first memory being moved to said second memory if said first memory already contains M items when a first item is presented for memorization in said device (page 4,

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lines 21 to 24), means for randomly selecting one of said second items memorized in the second memory and for removing the selected item if said this second memory already contains N-M items when said first item is presented for memorization in said device (page 4, lines 24 to 26), and means to memorize said first item in said device, wherein said first item becomes a newest of said M items in said first memory (page 6, lines 28 to 30), said method comprising:

(a) receiving an item that is presented to the device (page 5, line 31, to page 6, line 1); and

b) verifying whether said received item is already present in said device (page 6, lines 1 and 2);

wherein if said verification is positive, designating said received item as an item last memorized in said device (page 4, lines 15 and 16), and if said verification is negative, memorizing said received item in the device (page 4, lines 20 and 21).

Claim 7 depends from Claim 6 and adds the additional features, further comprising if said verification in step (b) is negative:

if said first memory does not already contain M items, memorizing said received item in said first memory (page 4, lines 20 and 21);

if said first memory already contains M items, transferring said oldest of said M items to said second memory (page four, lines 21 to 23); and

if said second memory already contains N-M items, randomly selecting one of said second items in said second memory for removal from said second memory (page 4, lines 24 to 26), removing said randomly selected item (page 4, line 25), and memorizing said oldest of said M items in said second memory (page 4, line 26).

Claim 8 is dependent from Claim 2 and adds the additional feature, wherein if said first item is already present in said device, said oldest item in said memory is moved to said second memory and said first item is removed from said second memory to said first memory as said newest of said M items in said first memory (page 4, lines 16 to 18).

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VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The Examiner has rejected Claims 1 to 8 under 35 USC 103(a) as unpatentable over an article by Jouppi et al in view of US Patent 4,008,460 to Bryant et al.

The Examiner has rejected Claims 4 and 5 under 35 USC 103(a) as unpatentable over Jouppi et al, Bryant et al, and US patent 5,513,336 to Vishlitzky et al.

VII. ARGUMENT

The instant invention is directed to an arrangement to prevent illegal attempts to access data, or fraudulent operations on data. The instant invention requires a user to obtain permission from a contents list in order to obtain access to specific content. The contents list contains only data. It does not contain instructions.

Claims 1 and 6 specifically recite:

"said device being capable of memorizing N items, N being a natural integer, (said device) comprising a first memory adapted to memorize a maximum of M items that were last presented to said device, M being a natural integer less than N, a second memory adapted to memorize N-M second items, each of said N-M items being different from each of said M items" (emphasis added).

It is clear that Claims 1 and 6 require that the first and second memories contain no duplicated items.

Both the cited reference to Jouppi et al and the reference to Bryant et al relate to rapid access to information in a cache. Nowhere does either reference show or suggest two memories whose stored items are different from each other. For example, Jouppi et al specifically states, on page 44, left column, lines 2 and 3, that their arrangement provides "*less duplication* between the contents of the first and second level cache". Furthermore, Jouppi et al specifically states, on page 45, left column, lines 14 to 17, "Two level exclusive caching *reduces*

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duplication of data between the first level and second-level caches, while providing additional associativity (emphasis added)." It is therefore clear that Jouppi et al has *duplication* of information in their memories, and therefore does not affect the patentability of Claim 1.

Similarly, Bryant et al. uses two memories: a cache and an active array. A least-recently-used algorithm determines a transfer of data or instructions from the active array to the cache, and which data or instructions are to be deleted from the cache to make room for the data or instructions to be transferred to the cache from the active array. Bryant et al. uses the cache for temporary storage. Any data in the cache is also contained in the active array. It is therefore clear that Bryant et al., similar to Jouppi et al, neither shows nor suggests that each of said N-M items in one memory are different from each of the M items in another memory, as recited in Claims 1 and 6.

Even if the disclosures of Jouppi et al and Bryant et al were to be combined, it is clear that the combination would not affect the patentability of Claim 1, since neither of the cited references show or suggest that each of the items in one memory is different from each of the items in another memory.

The Examiner has stated, in the Advisory Action of 16 July 2008, that two-level exclusive caching, as described by Jouppi et al, provides no duplication. This is inconsistent with the clear language contained in Jouppi et al. If there was no duplication in Jouppi et al, the *two* clear statements in Jouppi et al, on page 44, left column, lines 2 and 3, and on page 45, left column, lines 14 to 17, would not be present. It is therefore clear that Jouppi et al does not show or suggest that each of the items in one memory are different from each of the items in another memory.

Furthermore, Claims 1 and 6 specifically recite:

"means for randomly selecting one of said second items memorized in the second memory and for removing the selected item if said second memory already contains N-M items when said first item is presented for memorization in said device"

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The Examiner has asserted that this structure is found in Jouppi et al, on page 35, right column, line 30. The Appellant can not agree. Jouppi et al, merely states that, "Both direct-mapped and set-associative second-level caches with pseudo-random replacement were investigated." Nowhere does Jouppi et al, show or suggest:

"means for randomly selecting one of said second items memorized in the second memory and for removing the selected item if said second memory already contains N-M items when said first item is presented for memorization in said device"

as specifically recited in Claims 1 and 6. It is therefore clear that the references to Jouppi et al and Bryant et al do not affect the patentability of Claims 1 and 6.

Claims 2 to 5 and 8 are dependent from Claim 1 and add further advantageous features. The Appellant submits that these subclaims are patentable as their parent Claim 1.

Similarly, Claim 7 is dependent from Claim 6 and adds further advantageous features. The Appellant therefore submits that Claim 7 is patentable as its parent Claim 6.

The Examiner has applied US patent 5,513,336, to Vishlitzky et al, only to Claims 4 and 5. Vishlitzky et al nowhere shows or suggests:

"means for randomly selecting one of said second items memorized in the second memory and for removing the selected item if said second memory already contains N-M items when said first item is presented for memorization in said device",

as specifically set forth in Claims 1 and 6, nor does Vishlitzky et al show or suggest:

"each of said N-M items being different from each of said M items"

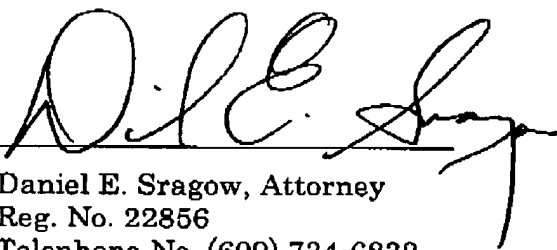
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as specifically set forth in Claims 1 and 6. It is therefore clear that Vishlitzky et al does not affect the patentability of Claims 1 and 6, and by extension, does not affect the patentability of dependent Claims 4 and 5.

The Appellant therefore submits that the Final Rejection is error and should be reversed. A notice to that effect is respectfully solicited.

Respectfully submitted,
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APPENDIX I. LISTING OF CLAIMS

Listing of Claims:

1. A device for memorizing a list of items, said device being adapted to memorize an item presented thereto, said device being capable of memorizing N items, N being a natural integer, comprising:

a first memory adapted to memorize a maximum of M items that were last presented to said device, M being a natural integer less than N ;

a second memory adapted to memorize $N-M$ second items, each of said $N-M$ items being different from each of said M items, an oldest of said M items in said first memory being moved to said second memory if said first memory already contains M items when a first item is presented for memorization in said device;

means for randomly selecting one of said second items memorized in the second memory and for removing the selected item if said second memory already contains $N-M$ items when said first item is presented for memorization in said device; and

means to memorize said first item in said device, wherein said first item becomes a newest of said M items in said first memory.

2. The device according to claim 1, said device being adapted to supply information indicating whether said first item is already present in said device.

3. The device according to claim 1, said device being adapted to contain only one copy of each item memorized.

4. The device according to claim 1, said device being adapted to memorize the number of times that said first item has been presented to said device.

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5. The device according to claim 4, said device being adapted to supply information indicating whether said first item has already been presented to said device for a number of times that exceeds a predetermined number.

6. A method of memorizing an item in a device adapted to memorize an item presented thereto, said device being capable of memorizing N items, N being a natural integer, said device comprising a first memory adapted to memorize a maximum of M items that were last presented to said device, M being a natural integer less than N, a second memory adapted to memorize N-M second items, each of said N-M items being different from each of said M items, an oldest of said M items in said first memory being moved to said second memory if said first memory already contains M items when a first item is presented for memorization in said device, means for randomly selecting one of said second items memorized in the second memory and for removing the selected item if said second memory already contains N-M items when said first item is presented for memorization in said device, and means to memorize said first item in said device, wherein said first item becomes a newest of said M items in said first memory, said method comprising:

(a) receiving an item that is presented to the device; and

(b) verifying whether said received item is already present in said device;

wherein if said verification is positive, designating said received item as an item last memorized in said device, and if said verification is negative, memorizing said received item in the device.

7. The method according to claim 6, further comprising if said verification in step (b) is negative:

if said first memory does not already contain M items, memorizing said received item in said first memory;

if said first memory already contains M items, transferring said oldest of said M items to said second memory; and

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if said second memory already contains N-M items, randomly selecting one of said second items in said second memory for removal from said second memory, removing said randomly selected item, and memorizing said oldest of said M items in said second memory.

8. The device according to claim 2, wherein if said first item is already present in said device, said oldest item in said first memory is moved to said second memory and said first item is moved from said second memory to said first memory as said newest of said M items in said first memory.

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APPENDIX II EVIDENCE

None

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APPENDIX III RELATED PROCEEDINGS

None